SFA Update

National Marine Fisheries Service *January 1998*

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National Marine Fisheries Service
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NMFS Reopens Public Comment Period for National Standard 1 Guidelines

On December 29, 1997, NMFS published a notice in the Federal Register (62 FR 67608) announcing the reopening of the public comment period for the proposed national standard 1 guidelines. Due to issues regarding interpretation of overfishing and other provisions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the comment period on national standard 1 has been reopened for an additional 30 days, from December 29, 1997, to January 28, 1998.

The guidelines [50 CFR 600.305 et seq.] interpret the Magnuson-Stevens Act's national standards, which are statutory principles for the management of the Nation's fishery resources. The guidelines are the basis upon which all proposed management programs are judged. National standard 1 states that "conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry". The Sustainable Fisheries Act (SFA), which amended the Magnuson Fishery Conservation and Management Act in 1996 (now the Magnuson-Stevens Act), while not amending national standard 1, contained several provisions that substantially affect it. NMFS is seeking comments regarding these provisions as they relate to national standard 1, specifically: Usage of the terms "overfishing" and "overfished"; "fishery" versus "stock"; rebuilding schedules; and mixed-stock exception to the requirement to prevent overfishing on all stocks.

The SFA adopted, in large part, the regulatory definition of "overfishing" from the existing national standards guidelines [50 CFR 600.310(c)(1)], which states: "Overfishing is a level or rate of fishing mortality that jeopardizes the *long-term* capacity of a *stock or stock complex* to produce MSY on a continuing basis" (emphasis added). However, the SFA eliminated "long-term" and changed "stock or stock complex" to "fishery." The SFA also uses this as the definition for "overfished."

The first issue NMFS would like commenters to address is the SFA overfishing definition. NMFS thinks that the deletion of "long-term" in the definition is significant and that it emphasizes the need to deal with overfishing promptly and to rebuild overfished stocks in a short period of time, rather than in some indefinite time frame (i.e., "long-term"). NMFS believes that the fact that the SFA established other important overfishing and rebuilding measures with specific time frames and deadlines supports that conclusion. In addition, when the amended definition of "optimum," where OY (optimum yield) cannot be set above MSY (maximum sustainable yield), is taken into consideration with the overfishing definition, conservation and management measures are now held to higher standards and should be interpreted in that light. The proposed guidelines for national standard 1 would link "overfishing" to a rate of fishing mortality that threatens the ability of a stock to produce MSY without regard to time frame. NMFS requests comments on whether its interpretation of the definition of overfishing is appropriate, or whether the guidelines should be less specific, with MSY as only an eventual target.

(continued on p. 2)

Federal Northeast Stock Assessments' Science Valid, Advice Sound

Federal assessments showing declines in Northeast groundfish stocks are sound according to a report, "Review of the Northeast Fishery Stock Assessments," released January 7, 1998 by the National Academy of Sciences (NAS). The report further concludes that there is "no scientific basis to support assertions that the regulations imposed by Amendment 7 [of the Northeast Multispecies Management Plan] are too severe from a biological perspective" and agreed that strong management actions taken by NMFS and the New England Fishery Management Council were warranted.

The report is the result of a Congressional mandate that the NAS conduct a peer review of Canadian and U.S. stock assessments that were used as the basis for conservation and management of the Northeast groundfish fishery [SFA §210]. The panel that authored the NAS report focused its review on stock assessments for cod, haddock, and yellowtail flounder. The review confirmed NMFS conclusion that severe management measures were required to prevent collapse

(continued on p. 4)

On October 11, 1996, the Sustainable Fisheries Act (SFA) became law. It amended the Magnuson Fishery Conservation and Management Act (renamed the Magnuson-Stevens Fishery Conservation and Management Act). The SFA includes numerous provisions that will require science, management and conservation actions by the National Marine Fisheries Service (NMFS). Mandatory implementation dates range from December 1996 to December 1998.

This is the fourth in a series of updates on NMFS implementation of SFA amendments to the Magnuson-Stevens Act. Throughout issues of the SFA Bulletin, "MSA §", followed by a section number, will identify specific sections of the Magnuson-Stevens Act. Sections of the Sustainable Fisheries Act are identified by "SFA §". Acronyms commonly used in the Update include: AP (Advisory Panel), EFH (Essential Fish Habitat), FMP (fishery management plan), and HMS (Highly Migratory Species).

Peer Review Finds Gulf of Mexico Red Snapper Severely Overfished

A consolidated report from three independent peer review panels recently provided to the Gulf of Mexico Fishery Management Council concludes that the red snapper stock in the Gulf of Mexico is severely overfished. The report states that the number of juvenile red snapper caught as bycatch in shrimp trawls and the number of adults harvested in the directed red snapper fishery must be decreased in order to reduce overfishing. The report is the result of a review of the scientific and management basis for conserving and managing the red snapper fishery in the Gulf of Mexico and is a requirement of the 1996 Magnuson-Stevens Act [MSA §407(a)]. The findings of the three panels also call for improving management measures to recover the Gulf red snapper fishery.

The peer review noted that NMFS assessments are sufficient to make sound management decisions, but that there are some weaknesses in red snapper data collection that need to be addressed. The report's authors cautioned that despite uncertainty over some of the data used in stock assessments, action is needed now to rebuild this valuable resource. The report found that current data collection techniques used to estimate shrimp bycatch need to be improved and management measures need to be strengthened in order to assure the eventual recover of the fishery. The report also concluded that the burden of recovery cannot be placed solely on the directed fishery. Even a closure of the red snapper fishery would not achieve rebuilding, and therefore the panel recommended that management strategies such as the use of bycatch reduction devices (BRDs), time-area closures, bycatch quotas or other effort/capacity reductions in the shrimp fishery be considered.

NMFS anticipates the report will be available soon on the SFA Website <<http://kingfish.ssp.nmfs.gov/sfa>>. For further information, contact John Witzig, NMFS Office of Science and Technology, 1315 East-West Hwy., Silver Spring, MD 20910.

National Standard 1 Guidelines

(continued from p. 1)

The second issue relates to the use of "fishery" versus "stock." As mentioned above, the SFA definition of "overfishing" uses the term "fishery" instead of "stock." Both terms are defined in the Magnuson-Stevens Act and are used rather interchangeably. The proposed guidelines, however, relate "overfishing" and "overfished" to stocks or stock complexes. Biologically, determining whether or not a fishery is overfished or rebuilt can only be done on a stock-by-stock basis. Some of the public comments received on national standard 1 to date state that preventing overfishing should apply to fisheries in a very broad sense, not to specific stocks within a fishery. NMFS seeks additional comments on whether it should change the national standard 1 guidelines from preventing overfishing of stocks and rebuilding overfished stocks to focusing on fisheries, which could include many different stocks.

The schedule for rebuilding overfished stocks is the third issue on which NMFS is soliciting comments. The SFA requires that overfished stocks must be rebuilt in the shortest possible time period, taking into account numerous factors [MSA §304(e)(4)(A)(i)]. The rebuilding time is not to exceed 10 years, except where stock biology, other environmental conditions, or internationally agreed upon management measures dictate otherwise. The specifics of this mandate are reflected in the proposed guidelines. However, many commenters requested further explanation of the SFA language. Following are two interpretations. The first assumes that the phrase "as short as possible" is the time it would take to rebuild a stock if there were no fishing mortality on that stock. If this time were under 10 years, then the factors in §304(e)(4)(A)(i) of the Magnuson-Stevens Act could be used to extend the rebuilding period up to a maximum of 10 years. If the rebuilding period exceeded 10 years in the absence of fishing, the rebuilding period without fishing automatically becomes the maximum time for rebuilding, unless an international agreement would require the extension of the rebuilding period. Under this interpretation, biological and environmental factors would be taken into consideration when developing the rebuilding schedule, and would not be considered again in determining an extension beyond the rebuilding period in the absence of fishing. A second view regarding rebuilding periods in excess of 10 years is to use the 10-year time as a guide. If this were the case, the big questions to be answered would be, how much longer can the rebuilding period be, should it have restrictions and if so, what should they be? NMFS doesn't think it is a good idea to have a rebuilding plan with no time period specified and that such open-ended plans would not be consistent with other elements of the Magnuson-Stevens Act. NMFS requests comments on whether or not rebuilding plans should have specific durations and identification of elements that should be considered in setting the rebuilding period in accordance with the Magnuson-Stevens Act.

The final issue NMFS would like commenters to consider is the mixed-stock exception to prevention of overfishing. The proposed exception would allow overfishing of one species in a mixed-stock complex only if it meets these requirements: It would result in long-term benefits to the Nation, comparable benefits could not be accomplished in another way, and the level of fishing mortality (removals of fish from the stock due to fishing) would not cause a stock to fall below its minimum stock size threshold or to require protection under the Endangered Species Act (ESA). Some commenters find the mixed-stock exception too strict. Others think the Magnuson-Stevens Act does not permit any exceptions to the requirement to prevent overfishing. NMFS seeks comments on whether it should delete, liberalize, or add to the exceptions, or whether it should let the exception stand as proposed.

NMFS will respond to comments received on national standard 1 during this additional 30-day comment period in the preamble to the final rule. Comments should be sent to Dr. Gary Matlock, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Hwy., Silver Spring, MD 20910. For details of the proposed rule, please refer to the exact language of the Federal Register notice (62 FR 67608), available via hyperlink to *GPO Online* from the SFA website at <<http://kingfish.ssp.nmfs.gov/sfa/prorules.html>>.

The SFA Update is published periodically by the Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910. Suggestions and comments should be sent to the above address, ATTN: SFA Update.

Director, Office of Sustainable Fisheries: Gary C. Matlock, Ph.D.
Editors: Richard Surdi, Peter Fricke, Aliçon Morgan
Design and Layout: Aliçon Morgan

Implementing the Sustainable Fisheries Act: NMFS Accomplishments to Date

Immediately after the SFA was enacted, NMFS developed a strategy to implement the SFA. The SFA Implementation Plan contains numerous, detailed tasks whose completion is necessary to implement the requirements of the SFA. A computerized tracking system of the Implementation Plan tasks is available on the SFA homepage online at <<http://kingfish.ssp.nmfs.gov/sfa>>. The National Oceanic and Atmospheric Administration (NOAA) Office of General Counsel for Fisheries (GCF) incorporated the SFA changes and amendments into a consolidated version of the Magnuson-Stevens Act. It is available at the same web site. Another document prepared by GCF, also located on the SFA homepage is A Guide to the Sustainable Fisheries Act. This document summarizes and interprets each section of the SFA and includes legislative history on most sections. Since SFA became law, NMFS has succeeded in implementing many of the requirements of the SFA. Highlights of completed tasks follow.

• November 1996 - Amendments to definitions in the Atlantic Coastal Fisheries Cooperative Management Act were reviewed. Necessary changes have been made. NMFS also prepared and sent guidance to the Regional Fishery Management Councils regarding the new review schedule for Fishery Management Plans (FMPs) and FMP amendments by the Secretary of Commerce (Secretary). An Advance Notice of Proposed Rulemaking (ANPR) on Essential Fish Habitat (EFH), was published in the Federal Register.

• December 1996 - A letter report to Congress regarding plans for implementing bycatch reduction agreements under the SFA was prepared and transmitted. In addition, a revised schedule for key Secretarial events was distributed.

• January 1997 - Through its Northeast Fisheries Center, NMFS prepared and submitted a report to Congress on the New England fishing capacity reduction initiative.

• February 1997 - NMFS surveyed all Federal FMPs to identify existing standards and measures implemented for the purpose of reducing bycatch and prepared a report of its findings for the State Department. A notice seeking nominations to HMS Advisory Panels (APs) was published in the Federal Register.

• March 1997 - A notice requesting nominations to an Ecosystem Principles AP, an ANPR regarding a Central Lien Registry System for Limited Access Permits, and a Rule regarding the lobster fishery in Maine "pocket" waters were published in the Federal Register.

• April 1997 - A Notice requesting nominations to Red Snapper Peer Review Panels, a notice announcing membership of two HMS APs, a Proposed Rule regarding EFH, and a notice requesting comments on other HMS APs were published in the Federal Register.

• May 1997 - A Final Rule on Foreign Fishing Vessels in Internal Waters, a Rule regarding Negotiated Conservation and Management Procedures, and a notice of the membership of the Ecosystem Principles AP were published in the Federal Register.

• June /July 1997 - Proposed National Standard Guidelines were developed and published in the Federal Register [62 FR 41907], the 45-day comment period for these proposed guidelines ended September 18, 1997; a proposed rule containing procedures for soliciting nominations from Treaty Tribes with fishing rights in California, Idaho, Oregon and Washington, and for appointing a new Indian Tribal representative to the Pacific Fishery Management Council was published in the Federal Register [62 FR 35468], the comment period for this proposed rule was extended to August 11; the HMS Pelagic Longline Fishery AP met July 14; the HMS Billfish AP met July 22-23; and the Red Snapper Statistics Peer Review Panel met July 21-25.

• August/September 1997 - Report of the Status of Fisheries of the United States [MSA § 304(e)], was sent to the Councils on September 30; the proposed Guidelines for Carrying Observers [MSA §403(a)], was published in Federal Register on 22 September (62 FR 49463); the final rule regarding the addition of a Tribal Representative to the Pacific Fishery Management Council was published in the Federal Register on September 10 (62 FR 47584); a draft proposal for Guidelines for Fishing Capacity Reduction was published on the Internet at <<http://kingfish.ssp.nmfs.gov/sfa/proprules>> on August 22; the final rule on Policy Guidelines for Emergency Rules was published in the Federal Register on August 21(62 FR 44421); and a proposed rule for Recusal of Council Members was published in the Federal Register on August 7 (62 FR 42474). Panel meetings, workshops and hearings in August and September included: Red Snapper Economics Peer Review Panel meeting (August 18-21) and Science & Management Peer Review Panel meeting (August 25-29); Ecosystem Principles Advisory Panel (AP) meeting (September 9-10); HMS/Billfish AP meeting (September 18); HMS/Longline Technical Working Group meeting (September 18); House Committee on Natural Resources oversight hearing (September 18); and HMS/Longline AP meeting (September 19).

• **October-December 1997 - Reopened public comment period for national standard 1 guidelines on December 29 (see related story, p. 1); delivered the Report on the Contribution of Bycatch to Charitable Organizations to Congress on December 17; Published Interim final guidelines for the description and identification of essential fish habitat in the Federal Register on December 19; published a notice in the Federal Register on December 12 outlining a possible approach for implementing a Fishing Vessel Registration and Information System and prepared a discussion draft of that approach; implemented the Massachusetts Fishing Partnership Health Plan [MSA § 401(f)] on October 20 with coverage begun on December 1. Panel meetings, workshops and hearings held included: the first meeting of the highly migratory species (HMS) AP (October 16-17); third and final public meeting on community development quotas held by the National Research Council (December 2); 22 scoping meetings for Atlantic HMS during November; second Ecosystem Principles AP meeting (December 15-16).**

Federal Investment Task Force Established, Initial Meeting Held

In accordance with SFA §116(b), NMFS has established a task force to study the role of the Federal Government in subsidizing fleet capacity and influencing capital investment in fisheries. The task force held its first meeting at the Quality Inn, Colesville Road, Silver Spring, Maryland from January 6-8, 1998. They are tentatively scheduled to meet four more times between now and August 1998. Public comment periods will be scheduled during each meeting. The task force will report its findings to Congress (the Senate Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives) before October 11, 1998.

NMFS published two notices requesting nominations to the task force in the Federal Register: the original request published on August 28, 1997 (62 FR 45628), and a nomination deadline extension published on September 12, 1997 (62 FR 48058). Task force members represent interests from commercial and recreational fishing communities, the conservation community, and the academic community. They are: Gordon Blue, Alaska Crab Coalition; Theo Brainerd, South Atlantic Fishery Management Council; Priscilla Brooks, Conservation Law Foundation; Ralph Brown, Pacific Fishery Management Council; Scott Burns, World Wildlife Fund; Ed Ebisui, Attorney-at-Law; Thomas Hill, Atlantic and Pacific Marine Consultants, Inc.; Robert Jones, Southeastern Fisheries Association, Inc.; Walter Keithley, Louisiana State University; Jim Kendall, New Bedford Seafood Coalition; Jim Kirkley, Virginia Institute of Marine Science; Pete Leipzig, Fishermen's Marketing Association; Vishwanie Maharaj, American Sportfishing Association; Bryce Morgan, Kueckelhan, Crutcher, & Co.; Bob Palmer, Florida Marine Fisheries Commission; R. Bruce Rettig, Oregon State University; Ricks Savage, Wallace and Associates; William Schrank, Memorial University of Newfoundland; Barbara Stevenson, Otonka, Inc.; Borden Wallace, Daybrook Fisheries, Inc.; Michael Weber, Redondo Beach, California; and Donald Woodworth, MacMeekin & Woodworth.

Peer Review Report on Stock Assessments

(continued from p. 2)

of the stocks. The report concurs that the stock assessments showed "fishing mortality was high, and not sustainable, whereas spawning stock biomass [(an indicator of a stock's ability to reproduce and maintain itself)] was low and decreasing."

Copies of "Review of Northeast Fishery Stock Assessments" will be available in February from the National Academy Press, 2101 Constitution Ave., NW, Washington, DC 20418 at a cost of $35.00 plus shipping.

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Department of Commerce/NOAA
National Marine Fisheries Service
Office of Sustainable Fisheries
1315 East-West Highway
Silver Spring, MD 20910

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